

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of PAUL WELSH and U.S. POSTAL SERVICE,  
POST OFFICE, Gloucester, NJ

*Docket No. 00-669; Submitted on the Record;  
Issued May 7, 2001*

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DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant's disability beginning July 30, 1997 and surgery performed September 10, 1997 were causally related to his July 23, 1997 employment injury.

On July 23, 1997 appellant, then a 35-year-old letter carrier, injured his lower back while picking up a tub of mail. The Office of Workers' Compensation Programs accepted his claim for a lumbosacral strain. Appellant returned to limited duty the following day.

On July 30, 1997 appellant allegedly aggravated his back while attempting to sit down on a sofa at his in-laws' house and was taken to the emergency room by ambulance. Appellant stopped work after the incident and indicated that his physician, Dr. Vicki Bralow, an osteopath, directed that he be placed on bed rest. He did not return to work until October 13, 1997. Appellant received continuation of pay from July 30 through September 12, 1997.<sup>1</sup>

Appellant underwent lumbar laminectomies at L2-3 and L3-4 on September 10, 1997 after a magnetic resonance imaging (MRI) revealed a herniated disc and spinal stenosis at L2-3 and L3-4.<sup>2</sup> In a report dated September 8, 1997, Dr. Mark Kotapka, a Board-certified orthopedic surgeon, requested authorization on behalf of appellant to perform the laminectomy surgery, however, authorization by the Office was not given prior to surgery.

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<sup>1</sup> The Board notes that the employing establishment challenged appellant's entitlement to benefits and continuation of pay by letter dated September 18, 1997.

<sup>2</sup> The MRI scan on August 2, 1997 disclosed evidence of previous laminectomies at L4-5 as well as a central to left lateral L2-3 disc herniation, moderate to severe central spinal stenosis and left foraminal narrowing with apparent compression of the transversing left L3 root and flattening of the left L2 root. The MRI also disclosed a central disc herniation and spinal stenosis at L3-4 with compression of the L4 traversing roots bilaterally, more on the left.

On September 14, 1997 appellant filed a claim for wage loss from September 13 through 28, 1997, causally related to the July 23, 1997 injury.

Appellant submitted duty status and attending physician reports, which indicated that appellant's diagnosed disc herniations and resultant surgery were related to the July 23, 1997 incident and that appellant was disabled from work until October 13, 1997. Appellant also submitted a September 9, 1997 report from Dr. Kotapka, a Board-certified orthopedic surgeon, who discussed appellant's upcoming surgery and stated that appellant would most likely return to work approximately two to three months from the surgery date, without postoperative complications.

The Office referred appellant and the case record to an Office medical adviser to determine whether appellant's herniated discs and lumbar laminectomies were employment related. The Office medical adviser found insufficient evidence that the herniation documented by MRI scan on August 2, 1997 was caused by the July 23, 1997 employment incident. The Office medical adviser stated that appellant's action of bending down to pick up a tub of mail was not significant enough to cause a herniated disc and the MRI scan supported that appellant had a congenital condition. The Office medical adviser then stated that, based on these findings, surgery should not be authorized.

On October 2, 1997 the Office informed Dr. Kotapka of the Office medical adviser's opinion and requested that he provide a medical opinion on the cause of appellant's condition; taking into account that appellant continued to work after the July 23, 1997 injury, that the MRI scan indicated a previous back injury and surgery and that appellant practiced karate. Dr. Kotapka replied, in a report dated October 7, 1997, that appellant's congenital condition, *i.e.*, his lumbar stenosis, was aggravated by the work-related injury.

The Office later referred appellant, along with the case record and statement of accepted facts, to Dr. Stuart Dubowitch, an osteopath, for a second opinion examination. The Office requested that Dr. Dubowitch determine whether appellant's surgery and disability were causally related to the July 23, 1997 employment incident or to the incident of sitting on a sofa on July 30, 1997.

On February 4, 1998 Dr. Dubowitch examined appellant, reviewed his medical history and stated:

"I feel that his surgery was necessary and the injury was a result of his work-related trauma. The patient does admit to doing karate prior to the injury but was unable to resume since the surgical procedure. I, therefore, feel that the karate did not contribute to the disc herniation but the incident at work did."

In an addendum report dated March 30, 1998, Dr. Dubowitch stated: "From reviewing medical records along with the statement of accepted facts, I am unable to state whether the incident of July 23, 1997 or the incident of July 30, 1997 was the causative factor for producing his disc herniation."

Appellant was then referred for another second opinion examination with Dr. Marc Kahn, a Board-certified orthopedic surgeon. In a report dated November 5, 1998, Dr. Kahn examined appellant, reviewed his medical history and reports and determined that appellant had a preexisting degenerative disease of the lumbar spine with spinal stenosis. He stated:

“The patient sustained an injury at work on July 23, 1997. However, he continued to work light duty. The patient became disabled after the injury on the sofa at home. My opinion is the surgery was necessary because of the preexisting spinal stenosis and the event on the sofa at home. The injury of July 23, 1997 did not necessitate the surgery. The preexisting lumbar laminectomy did not necessitate the surgery.”

By decision dated December 11, 1998, the Office denied appellant’s claim for compensation.

On December 17, 1998 appellant requested an oral hearing. In support, appellant submitted a report dated January 21, 1999 from Dr. Bralow who related the history of appellant’s employment injury on July 23, 1997 and outlined his spinal condition as indicated by MRI scan, which led to surgery on September 10, 1997. Appellant continued to work limited duty after the employment incident until July 30, 1997, at which time appellant had “unremitting and increasing back and leg pain, numbness and tingling of both lower extremities....”

Dr. Bralow further stated: “The severity of these symptoms was clear when [appellant] sat on the sofa, forcing him to seek help from an emergency room on July 30, 1997.” Appellant also submitted updated reports from Dr. Kotapka, who stated: “... [appellant] clearly has an underlying congenitally narrowed spinal canal and that condition was in some manner aggravated by his lifting at work. I cannot speculate further as to a direct association between the two events, though certainly the temporal relationship that the patient noted is strongly suggestive.”

In a report dated February 18, 1999, Dr. Kotapka stated:

“I really cannot speculate as to whether or not [appellant’s] subjective symptomatology was caused by his reported lifting injury at work. As you will note, [appellant] had spinal stenosis, which is considered to have been congenital or at least a long-standing condition. Therefore, my belief is that his condition was aggravated by what he reported occurred at work, but I certainly cannot state that it was causal in nature.”

Following the hearing on May 27, 1999 at which appellant testified, the Office hearing representative denied the claim on August 16, 1999.

The Board finds that appellant failed to establish that his disability after July 30, 1997 and surgery on September 10, 1997 were causally related to his July 23, 1997 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a limited or light-duty position or the medical evidence of record establishes that he can perform the light-duty position, the employee has the burden to establish by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that he cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty requirements.<sup>3</sup>

Furthermore, appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability and the initial employment injury.<sup>4</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.<sup>5</sup>

In this case, the Office accepted that appellant's July 23, 1997 employment injury caused a lumbar strain. Appellant resumed work until July 30, 1997, when he injured his back while attempting to sit on a sofa. Appellant did not return to his limited-duty position until October 13, 1997.

Appellant has not submitted any medical evidence showing that the alleged recurrence of disability occurring on July 30, 1997 is causally related to the earlier work injury. Nor has he shown that the nature and extent of his back condition worsened due to the July 23, 1997 employment injury or that his light-duty job requirements beginning July 24, 1997 had changed. The medical evidence appellant submitted discussed his diagnosed disc herniations and the need for surgery, but failed to establish the cause of the alleged July 30, 1997 recurrence of disability.

In reports dated from July 30 to October 10, 1997, appellant's treating physician, Dr. Bralow, diagnosed lumbar herniations and sciatica, indicated by a checkmark that the condition was caused or aggravated by appellant's employment activity. In her report dated January 21, 1999, Dr. Bralow discussed further appellant's work injury of July 23, 1997, the incident on July 30, 1997 and his symptomatology related to the July 30, 1997 incident. These reports, however, do not provide a rationalized medical opinion that the employment incident on July 23, 1997, which caused the accepted lumbar strain, also caused appellant's disc herniations or disability from work after July 30, 1997. Further, a physician's checkmark indicating causation, without further explanation, has little probative value and is insufficient to establish causal relationship.<sup>6</sup>

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<sup>3</sup> *Terry R. Hedman*, 38 ECAB 222 (1986).

<sup>4</sup> *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

<sup>5</sup> *See Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

<sup>6</sup> *Robert J. Krstyen*, 44 ECAB 227 (1992).

Dr. Kotapka, another treating physician and a Board-certified orthopedic surgeon, indicated in two 1997 reports, that appellant's congenital condition, lumbar stenosis, was aggravated by his July 23, 1997 work injury. However, he did not support his conclusion with a rationalized medical opinion relating appellant's current condition or surgery on September 10, 1997 to the July 23, 1997 employment injury. In later reports dated January 25 and February 18, 1999, Dr. Kotapka stated that, although he believed that appellant's congenital condition was aggravated by what occurred at work, he could not directly associate appellant's condition with the work incident.

To determine whether appellant had residuals of the accepted employment injury and whether a condition related to the employment injury required surgery, the Office obtained opinions from Dr. Dubowitch, an osteopath and Dr. Kahn, a Board-certified orthopedic surgeon. Dr. Dubowitch initially related appellant's condition and need for surgery to the July 30, 1997, work related. In a clarifying report, Dr. Dubowitch stated that, based on a review of all the evidence, he could not determine whether the July 23, 1997 employment incident or the July 30, 1997 sofa incident caused appellant's disc herniation. Dr. Kahn, in his report dated November 5, 1998, considered all the factual and medical evidence and concluded that appellant's disability and surgery were related to his preexisting spinal stenosis and the event on the sofa at home, on the basis that appellant became disabled only after the sofa incident.

Appellant has presented no rationalized medical evidence establishing that the claimed recurrence of disability occurring on July 30, 1997 was causally related to the July 23, 1997 employment injury. Therefore, he has failed to meet his burden of proof that he sustained a recurrence of disability.

The August 16, 1999 and December 11, 1998 decisions of the Office of Workers' Compensation Programs are hereby affirmed.

Dated, Washington, DC  
May 7, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member